



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

RIN 0648-XF599

Notification of Receipt of a Petition to Ban Imports of All Fish and Fish Products from Mexico that Do Not Satisfy the Marine Mammal Protection Act Provisions

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of petition to ban imports through emergency rulemaking; request for information and comments.

SUMMARY: NMFS announces receipt of a petition for emergency rulemaking under the Administrative Procedure Act. Natural Resources Defense Council, the Center for Biological Diversity, and Animal Welfare Institute petitioned the U.S. Department of Commerce and other relevant Departments to initiate emergency rulemaking under the Marine Mammal Protection Act ("MMPA"), to ban importation of commercial fish or products from fish that have been caught with commercial fishing technology that results in incidental mortality or serious injury of vaquita in excess of United States standards.

DATES: Written comments must be received by 5 p.m. Eastern Time on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2017-0097, by either of the following methods:

1. *Electronic Submissions:* Submit all electronic comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0097, click the "Comment Now!" icon, complete the required fields and enter or attach your comments.

2. *Mail:* Submit written comments to: Director, Office of International Affairs and Seafood Inspection, Attn: MMPA Petition, NMFS, F/IS, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe portable document file (PDF) formats only. The complete text of the petition is available via the internet at the following web address: <http://www.nmfs.noaa.gov/ia/>. In addition, copies of this petition may be obtained by contacting NMFS at the above address.

FOR FURTHER INFORMATION CONTACT: Nina Young, NMFS F/IS at Nina.Young@noaa.gov or 301-427-8383.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(2) of the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1371(a)(2), states that: "The Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards." In August 2016, NMFS published a final rule (81 FR 54390; August 15, 2016) implementing the fish and fish product import provisions in section 101(a)(2) of the MMPA. This rule established conditions for evaluating a harvesting nation's regulatory programs to address incidental and intentional mortality and serious injury of marine mammals in fisheries operated by nations that export fish and fish products to the United States. In that rule, NMFS stated that it may consider

emergency rulemaking to ban imports of fish and fish products from an export or exempt fishery having or likely to have an immediate and significant adverse impact on a marine mammal stock.

Information in the Petition

NMFS received the petition on May 18, 2017. The petition alleges that the Secretaries of Commerce and other relevant Federal Departments are required to carry out non-discretionary duties under section 101(a)(2) of the MMPA (16 U.S.C. 1371(a)(2)), to "ban the importation of commercial fish or products from fish" sourced in a manner that "results in the incidental kill or incidental serious injury" of vaquita "in excess of United States standards." The petition requested that the relevant Secretary ban all fish and fish products originating from the vaquita's range in the northern Gulf of California that were obtained using any kind of gillnet—the fishing gear solely responsible for the current decline of the vaquita.

As support for the need for this action, the petition cites reports from the Comité Internacional para la Recuperación de la Vaquita (CIRVA) documenting a 95 percent decline in the vaquita population over the last two decades. The petitioners also assert that for the vaquita, gillnet bycatch has driven the

species from a population of more than 700 in 1990 to currently fewer than 30 vaquita.

The petitioners maintain that any fishery using gillnets in the Upper Gulf of California violates U.S. standards under the MMPA. The petitioners provide a list of more than 30 fish species potentially harvested by gillnets including corvina and Pacific sierra, which are currently exempt from the Mexican regulations banning the use of gillnets.

On June 30, 2017, Mexico adopted a permanent ban on the use of gillnets throughout the range of vaquita, with the exception of gillnet fisheries for corvina and Pacific sierra. The regulations also prohibit night fishing, establish sites for disembarkation, and require the use of vessel monitoring systems http://diariooficial.gob.mx/DOFmobile/nota_detalle.php?codigo=5488674&fecha=30/06/2017.

NMFS will consider public comments in evaluating the request by the petitioners for an import ban. In addition to general comments on the petition, NMFS specifically requests comments on:

- The adequacy of existing measures regulating commercial fishing throughout the range of the vaquita;
- Whether such measures can be considered comparable in effectiveness to the U.S. regulatory program;

- Whether the apparent decline in the vaquita population attributed to interaction with commercial fishing meets the standard of "immediate and significant adverse impact on a marine mammal stock" within the MMPA; and
- Which specific fisheries are, or may be, directly associated with potential mortality of vaquita and therefore fall within the scope of the petition for emergency action.

Dated: August 16, 2017.

John Henderschedt,
Director,
Office of International Affairs and Seafood Inspection,
National Marine Fisheries Service.

[FR Doc. 2017-17717 Filed: 8/21/2017 8:45 am; Publication Date: 8/22/2017]